

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA
CHARLESTON DIVISION**

IN RE: ETHICON, INC. PELVIC REPAIR
SYSTEMS PRODUCTS LIABILITY
LITIGATION

Master File No. 2:12-MD-02327
MDL 2327

ETHICON ELECTION WAVE CASES
LISTED IN EXHIBIT A TO PLAINTIFFS'
NOTICE OF ADOPTION

JOSEPH R. GOODWIN U.S. DISTRICT
JUDGE

**NOTICE OF ADOPTION OF PRIOR DAUBERT RESPONSE REGARDING TIMOTHY
ULATOWSKI FOR ELECTION WAVE**

In the Election Wave, Plaintiffs have adopted their Wave 1 briefing filed against Timothy Ulatowski, adding additional argument that Ulatowski's opinions regarding the Mersilene product should be excluded for the reasons stating in their prior briefing. [Dkt. 7346] (adopting Dkt. 2060 (motion) and Dkt. 2065 (memorandum))

Defendants hereby adopt and incorporate by reference their Supplemental Response and Notice of Adoption filed in relation to Ulatowski in Ethicon Wave 3, Dkt. 2910, and their Wave 1 Response Brief, Dkt. 2134. The analysis from that briefing explains why Plaintiffs' argument regarding Ulatowski's Mersilene opinions should also be rejected. Defendants submit that the 510(k) process is admissible, but even accepting the Court's prior rulings on that issue, Ulatowski's opinions rest in part on FDA actions outside of the 510(k) clearance process. Ulatowski's opinions are reliable and supported by his knowledge and training about the 510(k) process, postmarket surveillance, enforcement actions, and design controls that he accumulated over 37 years at the FDA.

For the reasons stated in Defendants' Wave 3 and Wave 1 briefing [Dkt. 2910, 2134], Plaintiffs' motion should be denied in its entirety.

Respectfully submitted,

s/ William M. Gage

William M. Gage (MS Bar No. 8691)
Butler Snow LLP
1020 Highland Colony Parkway
Suite 1400 (39157)
P.O. Box 6010
Ridgeland, MS 39158-6010
(601) 985-4561
william.gage@butlersnow.com

/s/ Susan M. Robinson

Susan M. Robinson (W. Va. Bar No. 5169)
Thomas Combs & Spann PLLC
300 Summers Street
Suite 1380 (25301)
P.O. Box 3824
Charleston, WV 24338
(304) 414-1800
srobinson@tcspllc.com

COUNSEL FOR DEFENDANTS
ETHICON, INC. AND JOHNSON & JOHNSON

CERTIFICATE OF SERVICE

I certify that on this date I electronically filed this document with the clerk of the court using the CM/ECF system, which will send notification of this filing to CM/ECF participants registered to receive service in this MDL.

s/ William M. Gage
COUNSEL FOR DEFENDANTS

45510610.v1